

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.3934 OF 2005

Pournima Patil Petitioner

Versus

The Principal, G.M.Momin

Womens College, Bhiwandi

Dist. Thane and Ors. Respondents

Mr.N.M.Ganguli for petitioner

Mr.A.G.Kothari for respondent nos.1 and 2

CORAM : P.V.KAKADE, J.

DATE : 23RD MARCH 2006

P.C.:

1. Heard the learned counsel for both the parties.
Perused the record.

2. The petitioner has preferred this petition
against the order passed by Member, University Tribunal,
Mumbai dated 2.2.2005 dismissing her Appeal No.58 of

2000.

3. The Petitioner belongs to Other Backward Class and has passed M.Sc. in Botany with 57% of marks from the University of Mumbai. She has however not cleared the NET/SET. The respondent no.2 is an Education Society which runs G.M.Momin Women's College at Bhiwandi. The Respondent no.1 is the Principal of the college. It appears that the petitioner's services were engaged by appointment letter dated 25.7.1999 purely on temporary basis for fixed period till 20.4.2000 and therefore, services were terminated by order dated 9.6.2000. The petitioner prayed for reinstatement in service with all backwages for which propose appeal under Section 9 of the Maharashtra Employees Private Schools Act came to be filed.

4. After hearing both the parties and taking into account the relevant legal provisions the learned Member of the Tribunal came to the conclusion that Petitioner's appointment to the post of full time lecturer in Botany in the said College came to an end on 20.4.2000 by virtue of the fixed period appointment and as such the appeal for reinstatement and consequential reliefs came to be

dismissed. Hence the present petition.

5. It is to be noted that the basic requirements for being appointed as a lecturer in any college is passing of Master Degree with at least 55% of marks and clearance of NET/SET. There is no dispute that the appellant had passed M.Sc Examination by securing 57% of marks but admittedly she had not cleared NET/SET. These requirements regarding the qualifications of Lecturer were in existence since before 1995 and thus it could be seen that the petitioner at the time of her initial appointment in the college was not fully qualified and eligible and therefore, she could not have been appointed on regular basis and her appointment was temporary. It is also pertinent to note that it is clear that the appellant was appointed afresh for each academic year, this fact also shows that her appointment was temporary.

. It was the case sought to be made out on behalf of the petitioner that she was not given any appointment letter, which however is not correct and appointment letter dated 25.7.1999 produced on record and reproduced by the learned Member in his order is quite clear. Where from it is clear that her appointment for the academic

year was on temporary basis and for a specific period upto 20.4.2000. The Tribunal appears to have relied upon the ratio of the Apex Court in the case of Hindustan Education Society vs Shaikh Kaleem Shaikh Gulam Nabi reported in (1997) 5 SCC 152, which in my considered view, is squarely applicable to the present case.

6. Mr.Ganguly the learned counsel for the petitioner vehemently urged that by virtue of the GR dated 22.12.1995 issued by the State Government, it was clear that services of the petitioner could not be terminated only because she was required to clear NET/SET examination, especially when the GR further directed that such lecturers should not be discharged from the service on the ground that they have not cleared NET/SET but they should not be paid any annual increment till they clear NET/SET. On perusal of the GR it is clear that it was enforced when the appellant was appointed as lecturer in the respondent college and therefore, on the basis of the said GR it was urged that the petitioner cannot be deprived of her right to apply for relaxation of the condition prescribed by the UGC for passing or clearing the NET/SET. However, this submission would be devoid of any merits mainly due to the reason that the petitioner's

appointment was not on regular basis but for fixed period and as such she could not be benefited of the GR. Moreover, it is also brought to my notice that subsequent to the termination of service of the petitioner the post occupied by her was filled by appointing qualified lecturer who had cleared NET/SET and therefore, the petitioner could not agitate the issue that she had been deprived of right to apply for the relaxation of the conditions.

7. It was further submitted that though the petitioner was given the appointment letter for fixed period, she continued to serve the college in that capacity right since the year 1997 and is to apply afresh to every academic year. If it was so, then in my considered view, the very conduct of the petitioner is applying afresh would estop her from challenging the original order of termination. The Single Judge of this Court in the case of Uday Bajirao Khairmode vs. The Chairman N.B.Education Society & ors. reported in 2003 (1) All M.R. 902, after relying on the apex court ruling in the case of Suneeta Aggarwal vs. State of Haryana (AIR 2000 SC 1058), has concluded that once an employee of an education institution has appeared at a fresh

selection after the post was re-advertised, without protest, his conduct in applying afresh would estop him from challenging the original order of termination, and therefore, the apex court came to the conclusion that such an employee would not be entitled to any discretionary relief.

8. Be as it may, the fact remains that the GR of 1995 which is sought to be relied upon by the petitioner is not applicable to this case and therefore, the reasoning adopted and finding recorded by the learned Member of the Tribunal appears to be just, legal and proper and would brook no interference.

9. In the result, the petition stands dismissed with no order as to costs.